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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SONYJP 3.0-203	
	Application Number 09/931,779-Conf. #3668	Filed August 17, 2001	
	First Named Inventor Yasuhisa Nakajima		
	Art Unit 2621	Examiner J. J. Vent	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant /inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number 38,253
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

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August 11, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of 1 forms are submitted.

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: August 11, 2008

Signature: (Daryl K. Neff)



ARGUMENTS

The final Office Action mailed March 19, 2008 and the advisory action mailed July 10, 2008 fail to meet the burden of showing that the pending claims are prima facie unpatentable. The combination of cited references fail to teach a system in which any discount charge data is multiplexed with content data and transmitted from one information processing apparatus to a second information processing apparatus and then used at the second information processing apparatus to control the amount charged for use of the content data.

The advisory action appears to argue that a prima facie case of obviousness is met if (a) one reference shows that discount charge data is generated and used in a server computer (see below) to control the dollar amount charged by the server for use of data transmitted to a terminal by the server computer (as allegedly taught by Matsuzaki) and (b) a second reference shows that content data can be multiplexed with a control message (as allegedly taught by Saitoh) and transmitted from the one information processing apparatus to the other. The advisory action appears to take this position even though the control message in Saitoh bears no relation to information charges for content data (see below).

The advisory action's position is untenable, because the recitations of claim 30 are still not met by the alleged combination. Neither the advisory action nor the final Office Action can muster support for the assertion on page 2 of the advisory action that "the information regarding discount charge data being embodied in the video stream is disclosed by Matsuzaki." As clarified below, Matsuzaki does not teach this.

Since neither reference teaches transmitting discount charge data from one information processing apparatus to a second information processing apparatus and neither reference even teaches using received discount charge data at a second

information processing apparatus for controlling the amount charged for content data received from a first information processing apparatus, the combination of references fails to meet claim 30.

As indicated in the Request for Reconsideration filed May 19, 2008, Matsuzaki teaches a server-based system in which the server keeps track of the charging and discounting of charges for content data, as seen at col.13 ll.13-37. Terminals do not receive information concerning the discounting of charges. The final Office Action correctly states that Matsuzaki fails to teach the following elements of claim 30:

 multiplexing the content data with the control message by a first information processing apparatus to produce multiplexed data and transmitting the multiplexed data via the digital broadcast transmission;

 receiving and demultiplexing the multiplexed data by a second information processing apparatus to receive the first control information and content data; and

 recording the received content data onto a recording medium by the second information processing apparatus.

As recited in claim 30, discount charge data is inserted into the control message that is then multiplexed with the content data and then transmitted and received by the second information processing apparatus.

The Office Action asserts that Matsuzaki teaches the element of inserting the discount charge data into a control message. However, the discount charge data is only placed in a command provided from one part of a server to another part of the same server.

Matsuzaki merely states: "Next, the terminal information setting portion 251 sets the assigned terminal encryption key and coefficient of basic charge and terminal information as to attributes of the terminal which are included

in the initialization command (an installation place of terminal 3, a screen size, etc.) to the terminal information storing portion 252 . . . " of a terminal managing portion 25 of a server 2 (col. 15 11.13-18). At best, Matsuzaki merely describes including "a coefficient of basic charge . . . information" in an initialization command to the terminal information storing portion 252 within the server. There is no teaching in Matsuzaki that the charge information is to be provided anywhere except to that one portion 252 of the same server which generates the initialization command. Manifestly, Matsuzaki does not teach that the charge information is included in any control message that is multiplexed with content data, so that the multiplexed content data is transmitted to another information processing apparatus such as terminal 3.

The Office Action and the advisory action assert that Saitoh teaches the elements recited in claim 30 which are not taught by Matsuzaki. Applicants respectfully traverse this assertion. The Office Action cites FIG. 5 and the passage of Saitoh at col. 5 11.10-35 as teaching the remaining elements, specifically the multiplexing of a control message containing the discount charge data inserted therein with the content data and transmitting the multiplexed data via the digital broadcast transmission.

The cited passage of Saitoh col. 5 11.10-35 merely describes adding a "time stamp for reproducing the time interval" to a stream being converted into a packet and transmitted. Saitoh does not disclose that the "time stamp" has anything to do with discount charge data, or that it even has any relationship to the charge placed on the delivery of content data.

Applicant respectfully submits that the disparate teachings of Matsuzaki and Saitoh cannot be combined to meet the claim recitations of "inserting. . . discount charge data into a

control message and multiplexing the content data with the control message. . .by a first information processing apparatus to produce multiplexed data and transmitting the multiplexed data via the digital broadcast transmission" because in Matsuzaki, the alleged "control message" is merely an initialization command and is not something transmittable with content data via digital broadcast transmission. Moreover, the time stamp transmitted with the stream in Saitoh has no relation to discount charge data, and is not stated as being received or used in the same way as discount charge data is recited in claim 30.

Claims 41, 61, and 63 contain recitations similar to those of claim 30 discussed above and are believed to be fully distinguished from the combination of Matsuzaki and Saitoh for at least the same reasons as discussed above.

As all other claims depend from one of claim 30, 41, 61 or 63, it is believed that all claims are fully distinguished from the cited references for at least the same reasons as discussed above.

Moreover, the specific recitations of 60, 62 and 64 are not met by the cited passages of Matsuzaki. The cited passages fail to describe the transmission of discount charge data to a terminal which "varies inversely with the number of times the content data is used." At best, Matsuzaki merely states that the "charge calculating portion increases a discount rate of the charge for use of the pay information which is used frequently by referring to the use history when calculating the charge for use." (col. 6 ll.35-38) From this language one cannot tell how the charge decreases with use. For example, this language is consistent with a discount that increases by an amount which is not an inverse function of the number of times used. The advisory action fails to even address these arguments regarding claims 60, 62 and 64.